IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.168 OF 2004

R.C. Coastal Exports Pvt.Ltd. ... Petitioners

v/s

Essar Shipping Ltd. ... Respondents

Mr S. Deshmukh i/b Mr R.A.K. Najam-es-sani for Petitioners.

Mr P.S. Pratap for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 2ND MAY 2005

P.C.: -

1. By this petition, the petitioners challenge the award made by the Arbitral Tribunal dated 11th December 2003 holding that the Arbitral Tribunal did not have jurisdiction to entertain the counter claim submitted by the petitioners. The facts that are material and relevant for deciding this petition are that there was a charter party agreement entered into between the petitioners and the respondents on 1st January 2000 for hire of two vessels viz. M.V. Nand Rajgadi and M.V. Nand Ichhapur. Subsequently, there was a fixture note executed between the parties in relation to third vessel viz. M.V. Nand Bhavani. As the disputes arose between the parties, the respondents addressed a letter dated 5th July 2001 to the petitioners invoking the arbitration clause in the charter party agreement dated 1st January 2000 referring disputes specifically in relation to two vessels viz. M.V. Nand Rajgadi and M.V. Nand Ichhapur. Before the Arbitrators, the respondents submitted a counter claim in relation to the third vessel viz. M.V. Nand Bhavani. An objection was raised by the respondents to the jurisdiction of the Arbitrators to entertain the counter claim in relation to the third vessel because

according to the respondents, there was no arbitration clause in the fixture note pursuant to which that vessel was hired. The Arbitrators considered the objection raised and upheld the objection holding that there is no arbitration clause in existence between the parties in relation to the hiring of the vessel M.V. Nand Bhavani. It is this ruling which is challenged by the petitioners.

2. The learned counsel appearing for petitioners, relying on the letter dated 5th July 2001 submits that all the disputes between the parties were referred to the Arbitrators and therefore, the disputes in relation to third vessel were also referred. It is also submitted that by the fixture agreement, all the terms and conditions of the charter party agreement dated 1st January 2000 were made applicable and therefore, the third vessel was also hired under the said charter party agreement dated 1st January 2000.

3. In my opinion, leaving aside the controversy whether the third vessel was hired under the charter party agreement dated 1st January 2000 or not, the finding recorded by the Arbitral Tribunal can be supported for the sole reason that the counter claim was never referred to the Arbitrators. By the letter dated 5th July 2001, the respondents referred the disputes

regarding two vessels to arbitration viz. the disputes regarding vessels M.V. Nand Rajgadi and M.V. Nand Ichhapur and appointed their nominee on the Arbitral Tribunal and called upon the petitioners to appoint its nominee on the Arbitral Tribunal. That letter was replied to by the petitioners by letter dated 17th July 2001 and in that letter, the petitioners stated thus :-

> "We are in receipt of your letter dated 05/07/2001 and have noted the contents of the same.
>
> Pursuant to your client M/s Essar Shipping Ltd., appointing Mr R.S. Saran of 34, Bahulbali Enclave, I.P. Extension II, Karkardooma, New Delhi 110 092 as their Arbitrator to adjudicate the disputes between your client and ourselves (regarding alleged outstandings of hire dues of M.V. Nand Ichhapur and M.V. Nand Rajgadi) we hereby have to inform you the appointment of Shri S. Venkiteswaran, having his address at 114/B, Maker Chamber No.3, Nariman Point, Mumbai 400 021 as our Arbitrator to the Arbitration proceedings commenced by you. "

. The letter quoted above from the petitioners

makes it absolutely clear that to the Arbitral Tribunal, only disputes between the parties in relation to two vessels viz. M.V. Nand Ichhapur and M.V. Nand Rajgadi were referred. At no point of time, the petitioners ever got the counter claim of the petitioners referred to the Arbitral Tribunal. The learned counsel appearing for petitioners invited my attention to the letter dated 17th October 2003 address by the petitioners to the respondents,. By that letter, the objection raised before the Arbitral Tribunal about the maintainability of the counter claim was referred to and it was stated that now the counter claims are being referred to arbitration and the respondents were called upon to agree to referring the counter claims to the same Arbitral Tribunal. Though the learned counsel invited my attention to the letter dated 17th October 2003, he was not able to show me any averment made int he petition in relation to that letter. I do not find from the record that the letter was actually received by the respondents or not, what was the response of the respondents I also do not find an averment in the petition that this letter was produced before the Arbitrators. In the absence of any averment in relation to the letter dated 17th October 2003, in my opinion, that letter cannot be considered by this Court. In any case, perusal of the award shows that this letter was not before the Arbitrators because in the award, the

Arbitrators have specifically observed thus :-

> "In the original letter appointing the Arbitrators, the claimants have very specifically restricted the disputes to the vessels m.v. Nand Rajgadi and m.v. Nand Ichhapur and the respondents have not, in their letter appointing their Arbitrator, made any attempt to refer to m.v. Nand Bhavani."

. Taking overall view of the matter therefore, I do not find any reason to disturb the findings recorded by the learned Arbitrators in relation to the third vessel. The petition therefore fails and is dismissed.

There shall be no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.